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In the Supreme Court of the United States

No. 486

OCTOBER TERM, 1961

BILL HERRON,

Appellant,

v.

PORTLAND STAGES INC., an Oregon corporation; GEORGE B. FOURIER and WILLIAM B. ROBINSON,

Appellees.

JURISDICTIONAL STATEMENT

On Appeal from the Supreme Court of the State of Oregon.

Appearing herein
In propria persona:
BILL HERRON,
c/o Western Oil Co.,
10443 N. E. Klickitat,
Portland 20, Oregon,
Appellant.

VERGEER, SAMUELS & CROOKHAM,
1027 E. Burnside
Portland 14, Oregon,
Attorneys for Appellees.

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 1961

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In the Supreme Court
of the United States

No.

OCTOBER TERM, 1961

BILL HERRON,

Appellant,

v.

PORTLAND STAGES INC., an Oregon corporation; GEORGE B. FOURIER and WILLIAM B. ROBINSON,

Appellees.

JURISDICTIONAL STATEMENT

On Appeal from the Supreme Court of the State of Oregon.

JURISDICTIONAL STATEMENT

Appellant appeals from the Dismissal Order of the Supreme Court of the State of Oregon in the above Case there identified as No. 18-243 entered on July 11, 1961; and the Court of first instance, being the Circuit Court of Multnomah County at Portland Oregon there identified as No. 259-172, Dismissal Order issued by Judge Schwab on May 12, 1961, entered upon the Docket May 15, 1961.

Notice of Appeal from the Multnomah County Court to Supreme Court of Oregon received by the Multnomah County Clerk via mail June 9, 1961; opposing counsels also received service on copy of Notice of Appeal via mail June 9, 1961; Notice of Appeal perfected June 13, 1961 by personal presentation and filing with the Multnomah County Clerk Undertaking on Appeal, Designation of Records, and payment of $20.00 fee for the Supreme Court of Oregon; opposing counsels also received service on true copy of Undertaking on Appeal and Designation of Records via mail June 13, 1961.

Notice of Appeal from the Dismissal Order of the Supreme Court of the State of Oregon to Supreme Court of the United States filed in person with the Clerk of the Supreme Court of the State of Oregon August 10, 1961; the opposing counsels also received service on a true copy of Notice of Appeal to the Supreme Court of the United States via Special Delivery Mail with return receipt on August 10, 1961 at 4:10 P.M. as the return receipt card shows.

Appellant submits this Statement to show that the Supreme Court of the United States has Jurisdiction of the Appeal and that substantial Oregon State and Federal Constitutional Questions are presented.

The foregoing precise mention of dates and procedures of filing and service on opposing counsels are of great essence in this Case and in further relation thereto appellant cites Oregon Statutes 19.023; 19.030; 19.038; Chap. 558 Sec. 4-1959; and in further substantiation thereof has submitted a Certified Copy of the Docket

entries prepared by the Transcript Clerk of Multnomah County, State of Oregon and attached hereto as Appendix A.

To conclusively show herein appellant has filed his Appeals within the Statute time of 30 days after the entry of the Judgment appealed from, cites to wit:

Re: Court below, of first instance; Judge Schwab's Order of Dismissal entered May 15, 1961; Appeal to Supreme Court of Oregon entered by the Clerk of Multnomah County at Portland, Oregon on Tuesday, June 13, 1961; thus Appellant's Appeal was perfected on the 29th day.

Re: Appellate Court, Supreme Court of Oregon; the Justices issued their Order of Dismissal on Tuesday, July 11, 1961; Appeal to the Supreme Court of the United States entered by the Clerk at Salem, Oregon on Thursday, August 10, 1961; thus Appellant's Appeal was perfected on the 30th day, the last day.

OPINIONS BELOW

The Opinion and Order of the Supreme Court of the State of Oregon is not reported. A Certified Copy of that Court's Opinion and Order is attached hereto as Appendix B.

Two Opinions and Orders of the Court of first instance, Circuit Court of Multnomah County, State of Oregon, Judge Herbert M. Schwab presiding are not reported. A true copy of each Order Appellant was served with, the first dated May 8, 1961, entered on

the Docket May 9, 1961; the second and final Order Dated May 12, 1961 entered on the Docket May 15, 1961, are attached hereto as Appendix C and D respectively. Both Orders being practically identical, only that the second one dated May 12, 1961 mentions Plaintiff as in propria persona.

Pertinent and relevant to these two Orders of Judge Schwab is a verbatim message of Judge Schwab's Clerk, John Toran Jr., which was left on Appellant's automatic phone answering and recording service and is attached hereto as Appendix E.

The Docket enteries, Appendix A, shows that Judge Schwab requested the first Order entered May 9, 1961 "pulled," and simultaneously filed a letter dated April 30, 1961, he received from E. J. Arnold, one of Appellant's business associates, via Special Delivery mail the morning of May 2, 1961, the date set by Judge Schwab for a "conference" on the matters of this Case. The letter stating Appellant Herron could not be present inasmuch he was commuting between Washington and Illinois concerning matters in a Federal Court Case. Mr. Arnold's letter to Judge Schwab was in copious detail altogether too lengthy to insert herein as an Appendix; however it is included among the designated papers prepared by the Transcript Clerk for transmission to the Appellate Courts.

JURISDICTION

The full record of this Case since its inception shows that it has been through the lower Court; arbitrarily and prejudicially dismissed by that Court's own Motion without a Trial or Hearing; an abuse of Court discretion.

Thence through the Appellate Court, the Supreme Court of the State of Oregon; whereupon the Justices inadvertently acting upon the unsuspecting bold audacious effrontery of false pleadings, misrepresentations, misquotes, diffusing averments and evasions of the opposing counsels Vergeer, Samuels & Crookham concerning facts, issues, filing dates, and service of pleadings upon Plaintiff-Appellant. also dismissed this Case without Appellant having a Trial or Hearing.

Therefore the records show Appellant has been denied both his State and Federal Constitutional rights and privileges to petition the Government for redress of grievances.

The Jurisdiction of this Court is invoked under the securities, grants, liberties and guarantees as specifically set forth in the Constitutions of the United States and State of Oregon, particularly as related to the Bill of Rights of both Federal and State Constitutions, and are enumerated herein under Constitutional Provisions Involved.

QUESTION PRESENTED

The records show pronouncedly clear the outstanding essence of this Appeal is that, Appellant desires to settle his grievances through the processes and procedure of the laws of our American Jurisprudence, as established by the Inspired Founding Forefathers of this Republic of the United States of America in the Federal Constitution and Congress, and promulgated by the Supreme Court of these United States:—Therefore Appellant prays: May he have his day in Court to present his grievances before an impaneled jury of his own peersmen within the circuit of the Court of first instance?

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitutional provisions involved are as follows:

(A) The U. S. Constitution, Article I, The Bill of Rights;—the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

(B) U. S. Constitution, Article VII, The Bill of Rights; in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

(C) Oregon State Constitution, Article I, Sec. 10, Bill of Rights; Justice To Be Open and Without Price—every man shall have remedy by due course of law for injury done him in his person, property, or reputation.

(D) Oregon State Constitution, Article I, Sec. 17, Bill of Rights: Trial by Jury in Civil Case. In all civil cases the right of trial by jury shall remain inviolate.

(E) Oregon State Constitution, Article VII, Judicial Department. Sec. 3 Actions at Law—Trials by Jury. In actions at law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of this state, unless the court can affirmatively say there is no evidence to support the verdict. Until otherwise provided by law, upon appeal of any case to the Supreme Court, either party may have attached to the bill of exceptions the whole testimony, the instructions of the court to the jury, and any other matter material to the decision of the appeal. If the Supreme Court shall be of the opinion, after consideration of all the matters thus submitted, that the judgment of the court appealed from was such as should have been rendered in the case, such judgment shall be affirmed, notwithstanding any error committed during the trial; or if, in any respect the judgment appealed from should be changed, and the Supreme Court shall be of the opinion that it can determine what judgment should have been entered in the court below, it shall direct such judgment to be entered in the same manner and with like effect as decrees are now entered in equity cases on appeal to the Supreme Court.

(F) Oregon State Constitution, Original Article VII, Sec. 6, Jurisdiction. The Supreme Court shall have jurisdiction only to revise the final decisions of the Circuit

Courts; and every cause shall be tried, and every decision shall be made by those judges only, or a majority of them, who did not try the cause or make the decision in the Circuit Court.

STATEMENT

As the Complaint filed in this Case shows, plaintiff-appellant's suit instituted against defendants in this action as the result of their vicious wanton unprovoked physical attack upon this appellant which caused him bodily injury that will forever be permanent; and which brought about another physical condition which at this date requires an urgent operation to relieve physical pain and distress, and for which an operation has now been scheduled.

Only a rudimentary examination need be made concerning the nature of the Pleadings filed by the defendants to conclusively determine they have used every possible means of disingenuous obsequious legal moves, and filing of ambiguous Pleadings and repeated Strike Motions endeavouring to thwart this Case coming to trial.

There could be only one plausible reason for such actions by counsels for the defendants, they absolutely do not have even a mere semblance of justifiable defense for their rash premeditated physical assault upon appellant; they being fully advised in the premise ample evidence is now and always has been in the hands of appellant to prove his allegations to a Jury Trial Court; therefore opposing counsels resort to such legal tactics.

Appellant believes it is pertinent fitting and proper

to reassert that opposing counsels have wilfully and purposely misquoted and misrepresented actual true facts of official record, thus they cease to be jurisprudential. They are outright acts of shyster kangaroo court debauchery performed in rank Promethean style right within the confines of an Appellate Court, the Supreme Court of the State of Oregon. Such acts of misquoting facts of record to a Court is an overt challenge and Rule 16 of the Oregon State Bar should be invoked.

The Brief, Supporting Motion To Dismiss, filed by defendant's counsels in the Supreme Court of Oregon is only one example of such misquotes to the Justices of that Appellate Court. The Certified Copy of Docket entries by appellant shows such.

Counsels for defendants averred to said Appellate Court service of the Motion To Dismiss appellant's Case was mailed to him; which conveyed the impression to the Justices of said Court appellant had defaulted through failure to respond to said Motion. Whereas the actual true facts are: appellant has evidence to show that counsels for the defendants were advised by attorneys opposing appellant in a Federal Court Case,—in which Herron was also appellant,—to alter their form of mailing service upon appellant Herron from regular mail service to Certified mail service with return receipt: the advising attorneys knowing at that time appellant Herron was constantly commuting in Eastern States relative to said Federal Case, therefore would not be in Portland to present the Notice of Arrival of Certified Mail which the postal carrier would

leave in his rural mail box. This the opposing counsels in this Case did; consequential results thereof appellant Herron did not receive the service in due time; as he would have if said service had been forwarded by regular mail as his associates in Portland could have provided sufficient means of answering to avoid a default.

With the foregoing facts and issues presented, and rebussicstantibus, appellant prays the causes of his Appeal be granted by this Court.

Dated this 6th day of October, 1961 at Portland, Oregon.

Respectfully submitted,

BILL HERRON,
Appellant in propria persona.

CERTIFICATE OF SERVICE

The undersigned, Bill Herron, the plaintiff-appellant herein acting as his own attorney appearing in propria persona does hereby certify: that in compliance with paragraph I of Rule 33 of Revised Rules of the Supreme Court of the United States, a copy of the foregoing jurisdictional Statement was placed in a sealed envelope properly addressed to Vergeer, Samuels & Crookham, 1027 E. Burnside, Portland 14, Oregon, and was forwarded via certified mail, return receipt requested and was deposited in the mail depository at the Main Branch Portland, Oregon, Post Office at Broadway and S. W. Glisan Street on this date.

That inasmuch appellant is not represented by counsel a member of the bar of the Supreme Court of the United States, he therefore will furnish proof of such service having been made by forwarding to the Clerk of the Supreme Court of the United States, the certified mail receipt together with its return receipt card immediately upon receipt of same from the recipient.

Dated this 6th day of October, 1961, at Portland, Oregon.

BILL HERRON,
Appellant in propria persona.

BILL HERRON
c/o Western Oil Co.
10443 N. E. Klickitat
Portland 20, Oregon
AL-4-2867

APPENDIX A

IN THE CIRCUIT COURT OF THE
STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

BILL HERRON,

Plaintiff

vs.

REGISTER No.
259-172

PORTLAND STAGES, INC., an Oregon corporation; GEORGE B. FOURIER, and WM. B. ROBINSON,

Defendants

DATE	LAW
19	
Sep 9 1959	Filed Complaint
Sep 16 1959	" Sum
Sep 22 1959	" Motions to strike
Jan 5 1960	" Motion strike motions
Jan 26 1960	ORED 1394/613 re motion
Feb 19 1960	Filed Amended Comp
"	" Notice
Feb 24 1960	" Motion to strike
May 9 1961	Order — / — Dismissing
	(Pulled at request of
"	Filed Letter to Judge Schwab
May 15 1961	Order 1462/425 Dismiss
Jun 13 1961	Filed Und. on Appeal
"	" Desig. of Record
"	" Notice of Appeal
Jun 19 1961	" Notice
Jul 7 1961	" Affidavit
"	Order / Strike
	Und. from files

STATE OF OREGON)
) ss.
County of Multnomah)

I, SI COHN, County Clerk and Ex-Officio Clerk of

the Circuit Court of the State of Oregon, in and for the County of Multnomah, hereby certify that the foregoing copy of the Circuit Court Register of the said cause in the above entitled court has been by me compared with the original, and the whole thereof, and contains each and every entry in said Register relating to said cause as the same appear of record in my office and in my care and custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 10th day of July, 1961.

SI COHN, County Clerk
By L. L. Fieber /s/
Deputy

APPENDIX B

BE IT REMEMBERED that at a regular term of the SUPREME COURT of the State of Oregon begun and held at the courtroom in the city of Salem on the first Monday, the 6th day of MARCH, 1961, WHEREUPON on this TUESDAY, the 11th day of JULY, 1961 the same being the 46th judicial day of said term, there were present:

Wm. M. McAllister, Chief Justice,
George Rossman, Associate Justice,
Harold J. Warner, Associate Justice,
William C. Perry, Associate Justice,
Gordon W. Sloan, Associate Justice,
Kenneth J. O'Connell, Associate Justice,
Alfred T. Goodwin, Associate Justice, and
F. M. Sercombe, Clerk,

when the following proceedings were had:

BILL HERRON, Appellant	)	
v.	)	Appeal from
PORTLAND STAGES, INC., an Oregon corporation, GEORGE B. FOURIER and WILLIAM B. ROBINSON, Respondents	)	MULTNOMAH County

The Court having duly considered respondents' motion to dismiss the above entitled appeal, and the Court being fully advised thereon,

IT IS HEREBY ORDERED that such motion be and the same hereby is allowed and the appeal dismissed.

IT IS FURTHER ORDERED that respondents

have and recover of and from appellant their costs and disbursements in this Court taxed at $30.

IT IS FURTHER ORDERED that this cause be remanded to the court below from which the appeal was taken with directions to enter an order in accordance herewith.

STATE OF OREGON,)
) ss.
County of Marion,)

I, F. M. SERCOMBE, Clerk of the Supreme Court of the State of Oregon, do hereby certify that the foregoing copy of Motion to Dismiss has been by me compared with the original and that it is a correct transcript therefrom, and of the whole of such original, as the same appears of record, and in my office and custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Salem, Oregon, August 8, 1961.

F. M. SERCOMBE
Clerk of Supreme Court, State of Oregon
by Wanda Miller /s/
Deputy

APPENDIX C

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

BILL HERRON, Plaintiff,	)	
vs.	)	
	)	No. 259-172
PORTLAND STAGES, INC., an Oregon corporation, et al, Defendants.	)	

ORDER OF DISMISSAL

IT APPEARING from the file in the above entitled cause that on April 14, 1961, per copy in the file, a notice was sent to counsel for plaintiff and counsel for defendants to appear in court on May 2, 1961 at 10:30 a.m. for a conference regarding the above entitled cause, and plainitff having failed to appear either in person or through counsel at the appointed time, counsel for defendants having appeared and indicated no objection to dismissal of said cause:

NOW, THEREFORE, IT IS CONSIDERED, ORDERED AND ADJUDGED that the above entitled cause be and the same is hereby dismissed on the Court's own motion for want of prosecution.

DATED: This 8th day of May, 1961.

s/ Herbert M. Schwab
CIRCUIT JUDGE

APPENDIX D

IN THE CIRCUIT COURT OF THE
STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

BILL HERRON, Plaintiff,	)	
vs.	)	
	)	No. 259-172
PORTLAND STAGES, INC., an Oregon corporation, et al, Defendants.	)	

ORDER OF DISMISSAL

IT APPEARING from the file in the above entitled cause that on April 14, 1961, per copy in the file, a notice was sent to plaintiff in propria persona and counsel for defendants to appear in court on May 2, 1961 at 10:30 a.m. for a conference regarding the above entitled cause, and plaintiff having failed to appear either in person or through counsel at the appointed time, counsel for defendants having appeared and indicated no objection to dismissal of said cause:

NOW, THEREFORE, IT IS CONSIDERED, ORDERED AND ADJUDGED that the above entitled cause be and the same is hereby dismissed on the Court's own motion for want of prosecution.

DATED: This 12th day of May, 1961.

s/ Herbert M. Schwab
CIRCUIT JUDGE

APPENDIX E

Verbatim message of Judge Schwabs' Clerk, John Toran Jr. which was left on appellant's automatic phone answering and recording service on Friday, May 12, 1961. I hereby Certify said verbatim message to be an exact true written reproduction of the verbal message said Clerk, John Toran Jr. left on my phone answering and recording service, and that it is whole and total sum of words thereon. The said message consuming (2) two spaces on said recorder, of ½ minute each.

TO WIT AS:—

Mr. Herron this is the Clerk for Judge Schwab calling and I am calling in connection with the order of dismissal which was entered in the case of Bill Herron versus Portland Stages Incorporated I wonder if you would call me on that case and our number here is CA 7 8441 extension 517 I will be here until about four thirty——

This is the Clerk for Judge Schwab trying to complete his call I say I will be here in the Court House until about four thirty If you like would you please call me by that time I mean before that time we are sending you a new order in that case one that was modified from the one that you now have you might compare it if you like and with the old order thank you.

Dated this 6th day of October, 1961, at Portland, Oregon.

BILL HERRON,
Appellant in propria persona.

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v.

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Appellees.

APPELLEES' MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION TO AFFIRM

On Appeal from the Supreme Court of the State of Oregon.

Appearing herein
In propria persona:
BILL HERRON,
c/o Western Oil Co.,
10443 N. E. Klickitat,
Portland 20, Oregon,
Appellant.

VERGEER & SAMUELS,
CHARLES S. CROOKHAM,
1027 E. Burnside
Portland 14, Oregon,

KENNETH E. ROBERTS,
1001 Board of Trade Building,
Portland, Oregon,
Attorneys for Appellees.

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 11-61

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In the Supreme Court
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APPELLEES' MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION TO AFFIRM

On Appeal from the Supreme Court of the State of Oregon.

MOTION TO DISMISS

Come now the appellees and respectfully move the Court for an Order dismissing the "Appeal from the Supreme Court of the State of Oregon" as filed herein by the appellant and as supported by the Jurisdictional Statement on file herein by the appellant.

The appellees show this Court that the appellant has brought this matter by "appeal" rather than by "writ

of certiorari," contrary to the provisions of 28 USC, Section 1257. An examination of the statute in question reveals that "appeal" is permitted only as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929."

In view of the foregoing, an examination of the claimed jurisdiction by the appellant is invited to pages 6 and 7 of the Jurisdictional Statement as filed by the appellant. In no instance is it shown nor claimed by the appellant that there is drawn in question the validity of a treaty or statute of the United States; nor is there any showing of the question of the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States.

It is therefore apparent that the Court lacks jurisdiction to entertain an appeal as has been brought herein by the appellant. Appellant's remedy, if any, lies solely through petition for writ of certiorari.

MOTION TO AFFIRM

Come now the appellees and move the Court for an order dismissing the appeal of the appellant on the ground and for the reason that no substantial question has been presented to this Court, either by way of an appeal or as a basis for a writ of certiorari.

Appellant's question as presented on page 6 of the "Jurisdictional Statement" is so vague and uncertain as to be a mere nullity. The purported provisions of the United States Constitution sought to be envoked by the appellant on page 6 of the Jurisdictional Statement likewise are without any coherent significance.

The Oregon State Constitutional provisions referred to on pages 6 and 7 of the "Jurisdictional Statement" do not, as set forth, present any Federal question. No claim is made that any of these provisions are in conflict with the United States Constitution or any United States statute or treaty, and it is difficult to determine what the appellant means by this inclusion.

The facts reveal that the appellant has had his day in court and has failed to take advantage of it. Appellant prefers to appear in propria persona for reasons known only to the appellant, but his obvious experience in legal matters clearly reveals that the only person at fault in any of these dismissals is the appellant himself.

The record as set forth in "Appendix A" of the "Jurisdictional Statement" indicates that the appellant filed his Complaint on September 9, 1959 (a law action sounding in assault and battery). A Motion to Strike was filed promptly after service of Summons and Complaint, and an Order entered thereafter upon oral argument. Subsequently, the appellant filed an Amended Complaint February 19, 1960, and within five days thereafter a Motion to Strike portions of the Amended Complaint was filed by the defendants. Thereafter, *and for a period of more than 15 months,* no activity was had on the file because of failure of the appellant to act.

As the records reveal, the Circuit Court, on its own motion, subsequently dismissed the case for want of prosecution. This Order was not entered until notice had been given the appellant and the attorneys for the appellees directing them to apear on the 2nd day of May, 1961, before the Circuit Court in Multnomah County, Oregon. The appellant did not appear and thereafter the Court entered the Order of Dismissal on its own motion for lack of prosecution. This was well within the inherent authority of the Circuit Court and certainly involves no federal question.

The Supreme Court of Oregon has held that this action is a matter of discretion with the trial court which will not be set aside in the absence of a showing of manifest abuse of discretion. *Bock* v. *Portland Gas & Coke Co.*, 202 Or 609, 277 P2d 758; *Horn* v. *California-Oregon Power Co*, 221 Or 328, 351 P2d 80.

The Order of Dismissal was signed by Circuit Judge Herbert M. Schwab on the 12th day of May and from

this order appellant took an appeal to the Supreme Court of the State of Oregon. No motion was filed by the appellant to seek a reconsideration of the Circuit Court action. The matters in connection with the commencement of the appeal were not filed until June 13, 1961, more than 30 days after the signing of the order by the Circuit Judge. The time for commencing appeal from such an order in the State of Oregon is 30 days. Oregon Revised Statutes provide as follows:

> ORS 19.026 "TIME FOR SERVICE AND FILING OF NOTICE OF APPEAL. (1) Except as provided in subsections (2) and (3) of this section, the notice of appeal shall be served and filed within 30 days after the entry of the judgment appealed from.
>
> (2) Where any party has served and filed a motion for a new trial or a motion for judgment notwithstanding the verdict, the notice of appeal of any party shall be served and filed within 30 days from the earlier of the following dates:
>
> (a) The date of entry of the order disposing of the motion.
>
> (b) The date on which the motion is deemed denied, as provided in ORS 17.615.
>
> (3) Any other party desiring to appeal may serve and file his notice of appeal within 10 days after the expiration of the time allowed by subsections (1) and (2) of this section.
>
> (4) When more than one notice of appeal is filed, the date on which the last such notice was filed shall be used in determining the time for preparation of the transcript, filing briefs and other steps in connection with the appeal. [1959 c. 558 §4]"

After the filing of the Notice of Appeal which indicated that the appellant was appealing from the Judg-

ment of May 12th, 1951, and pursuant to the rules of the Oregon State Supreme Court, a Motion to Dismiss the appeal for lack of jurisdiction was filed, together with a brief in support thereof. At all times, copies of all pleadings, notices, motions and briefs were served upon the appellant personally by mail at his address, 10443 N. E. Klickitat, Portland 20, Oregon. Because the appellant is not an attorney, it was deemed proper to effect mailing by certified mail with a return receipt requested (see affidavit of Charles S. Crookham included as part of the transcript submitted by the Clerk of the Supreme Court of the State of Oregon).

Subsequent to the filing of the Motion to Dismiss the appeal in the Oregon Supreme Court, the Court considered the matter on the record and without oral argument entered an order dismissing the appeal.

Nowhere is there any suggestion of any deprivation of right on the part of the appellant; rather the record is complete as showing a failure on the part of the appellant to act even reasonably promptly.

A lapse of time from February, 1960 until the Court's own motion of May of 1961 is unexplained and unexplainable. The appellees-defendants were certainly under no duty to act other than passively. *Bock* v. *Portland Gas & Coke Co.*, supra.

It is difficult to envision that any federally protected right has been infringed upon or violated.

Appellant did not seek a rehearing in the Supreme Court of the State of Oregon (see Rule 11, Rules of Procedure, Oregon Supreme Court, 222 Or [25]), but

commenced an appeal to this Court, complaining that he was denied opportunity to present this matter before a jury.

Any failure to present this matter to the trial court was occasioned solely by the appellant's own failure to act within any reasonable time.

The appellees thus feel that no appeal lies herein, nor that any Federal question has been invoked by appellant.

Respectfully submitted,

VERGEER & SAMUELS,
CHARLES S. CROOKHAM,
KENNETH E. ROBERTS,
Attorneys for Appellees.

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FILED
NOV 27 1961
JOHN F. DAVIS, CLERK

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Appellant,

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Appellees.

BRIEF OPPOSING MOTION TO DISMISS

On Appeal from the Supreme Court of the State of Oregon.

Appearing herein
In propria persona:
BILL HERRON,
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1027 E. Burnside
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KENNETH E. ROBERTS,
1091 Board of Trade Building,
Portland, Oregon,
Attorneys for Appellees.

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 11-61

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Appellant,

v.

PORTLAND STAGES INC., an Oregon corporation; GEORGE B. FOURIER and WILLIAM B. ROBINSON,

Appellees.

BRIEF
OPPOSING
MOTION TO DISMISS

On Appeal from the Supreme Court of the State of Oregon.

OPPOSING STATEMENT

The appellant pursuant to Rules 16-3, 33, 39 and 40 of this Court, answers to appellee's move seeking to have this case dismissed.

Appellant succinctly reiterates with amplifications that the Circuit Court of Multnomah County, State of Oregon, grossly erred and committed an abuse of court discretion in denying appellant's guaranteed state and

federal constitutional rights and privileges to a jury trial, wherein to present grievances concerning a vicious, wanton and premeditated physical assault upon appellant by both appellees, inflicting permanent injuries to appellant's spine and kidneys resulting in further consequential damage to other vital organs. To this date appellant has had two surgical operations performed by specialists in attempts to save the most seriously injured kidney and alleviate the necessity of its removal. Notwithstanding the facts of this case being amply set forth in appellant's Complaint, thus known to the lower court of first instance, Case No. 259-172, Judge Schwab arbitrarily dismissed this case without it ever having as much as a preliminary hearing.

Appellant is entitled to have his day in court and present his grievances before his own peersmen, and further set forth the positive evidence he has to show the biased, partial and fixed attitude of said judge of the lower court; who was recently appointed to fill a vacancy in the Circuit Court of Multnomah County, State of Oregon. Further positive evidence appellant has to show is that a very close personal association between Judge Schwab and appellee Fourier did exist, and such is certainly pertinent and relative to the issues of this cause of action.

Appellant has evidence to show that at the time this unprovoked physical assault was deliberately perpetrated upon him, said judge was then serving as a member of the school board and in such a position he arranged a "fixed proposition" whereby appellee Fourier

had constant assurance he would receive the contracts issued each year for furnishing the public schools with buses and drivers for students' transportation. Thus it becomes most obvious why Judge Schwab arbitrarily dismissed appellant's Complaint; why said judge "arranged" that appellant's case be assigned to him, as he attempted to do in two other pending cases appellant has in the Circuit Court.

It is well established among attorneys,—and very well known to judges of the Multnomah County Courts, —that when attorneys are fully conscious their clients just do not have any justifiable defense for a wanton physical assault action such as this case of appellant's, they then resort to constant senseless moves as repeated strike motions and dismissal actions as counsels for appellee have done in this case. Appellant contends just such shyster tactics are tantamount to a confession of guilt. The certified records transmitted by the clerk of the Supreme Court of Oregon to this Court will show that counsel for appellees falsely swore that service of the Motion to Dismiss in that court, had been perfected upon appellant. Appellant has positive evidence to show that at the time said Motion to Dismiss was filed that counsel for appellees had full knowledge that appellant Herron was still constantly commuting both intra- and interstate in connection with his business and legal affairs and at that particular time he was not even in the State of Oregon. Appellant knew absolutely nothing whatsoever of the fact that such a Motion of Dismissal had ever been filed in the Oregon Supreme Court until he received a copy letter from F. M. Sercombe, clerk

of the Supreme Court which was addressed to counsel Charles Crookham, advising him that the Justices of the Supreme Court of Oregon had granted respondent's Motion to Dismiss this case; by which time it was then too late to make application for a rehearing on the matter concerning such fraudulent methods of service. A certified copy of said Dismissal Order appear in Appellant's Jurisdictional Statement, page 14, Appendix B.

ARGUMENT

Positive proof that all opposing counsel have intentionally misquoted to all three courts in this case is fully sustained by appellant's Exhibits A, B, C and D; all four of the opposing counsel mailing envelopes which contained service copies of pleadings in this case; all clearly reveal they were sent by regular four cent postal mailing service; no Certified Mail Registry Number appearing whatsoever.

These exhibits further prove what extensive outright crooked means of blasphemy and brazen blarney all opposing counsel have resorted to in their vain attempt to have it appear to all the courts they were a group of exemplary juridical saints and apostles. Also it is proven all their elaborate means of having photostat copies made of certified mail envelopes which were returned by reason of appellant not being in Portland at that time to sign for their delivery, was thus only a subterfuge; as is also counsel Crookham's affidavit.

All opposing counsel have proven themselves outright stupid impostors by their very own assertions and

citations; particularly O.R.S. 19.026. Beginning with the last paragraph on page 4 of their Motion to Dismiss, carrying on through to page 5 and including their citation of O.R.S. 19.026—then referring to appellant's citations of O.R.S. 19.005, 19.023 and 19.038 under Appendices A, B and C—then to the certified copy of the Docket Entries prepared by the clerk of the Circuit Court, as shown in appellant's Jurisdictional Statement, Appendix A on page 12—from all it is shown that the Order signed by Judge Schwab was not filed and entered until May 15, 1961. Thus by the citations submitted by appellant it is very clearly revealed that the Oregon Statutes specifically designate that the 30-day period allowed to file and perfect the full proceedings of a Notice of Appeal, is figured, "not" from the day a judge signs an order, but from the date said order is entered upon the docket sheet of the county court clerk.

Appellant made such citations very clear on pages 1, 2 and 3 in his Jurisdictional Statement dated October 6, 1961; yet at this date all of the opposing counsel still continue to intentionally misrepresent and misquote to the Supreme Court in like manner as they did in the Circuit and Supreme Courts of Oregon.

Further misrepresentation by opposing counsel to the courts, appellant herein cites, to-wit: on page 9 last paragraph of appellant's said Jurisdictional Statement, appellant alleged opposing counsel had purposely changed their method of mailing service upon him from regular mail service to certified mail service, thus caus-

ing great delay in appellant receiving his service, which was exactly appellees' aim, to facilitate their filing actions calling for appellant's appearance at a time they very definitely knew he was out of town, and which actually did result in a default being taken, as stated in detail on page 9.

It is very pertinent to note that since the very beginning of this case counsel Vergeer & Samuels had counsel Frederic P. Roehr do their bidding of intentional misquotes to the lower court; he was supplanted by counsel Charles S. Crookham to likewise perform in the Oregon Supreme Court; now with this filing of appellees' Motion to Dismiss, counsel Kenneth E. Roberts continues along the same line of legal debauchery. All in direct violation of Rule 16 of the Oregon State Bar; which very explicitly states no counsel shall intentionally misquote facts, law citations, statutes or pleadings to any court for the purpose of misleading a court that favor may be gained for their causes.

Counsel's citations and pleaded lamentations concerning that the appeal of this case to the Supreme Court of the United States should have been via Petition for Writ of Certiorari is erroneous, inasmuch as no trial was ever had; thus the facts, merits and general issues of this case were never given an opportunity to be heard, therefore, nothing in generalities to review. The explicit single purpose of appellant's appeal to the Supreme Court of the United States is to have the original jurisdiction of this case reinstated to the court of first instance; that it be remanded back to its original

status and jurisdiction and set for an immediate trial by jury.

As to counsel's assertions appellant had let unnecessary time elapse in answering to pleadings is also entirely erroneous. The real and whole truth being appellees do not ever want this most provable physical assault and permanent injury case to ever come to trial. The very nature of their pleadings veritably vociferate with such deduction. Furthermore they have always had the ever present privilege and court rule available to them of filing a praecipe calling for a setting of a fixed date for a trial; but which the records show they never did do, but most readily could have done.

CONCLUSIONS

For good causes and showing herein cited that appellant has not ever had his day in court, together with the showing of the proven incidents of misrepresentation by appellees to all of the court as herein related, appellant therefore respectfully requests of this Court and prays that this case be reinstated, remanded back to the court of first instance, giving appellant his constitutional right to a trial by jury.

Dated this 22nd day of November, 1961 at Portland, Multnomah County, State of Oregon.

Respectfully submitted,

BILL HERRON, Appellant,
In propria persona.

CERTIFICATE OF SERVICE

COUNTY OF MULTNOMAH)
) SS. AFFIDAVIT
STATE OF OREGON)

I, BILL HERRON, being first duly sworn, depose and say, that I am the appellant acting as my own attorney appearing in propria persona, do hereby Certify, that in compliance with Rule 33 of Revised Rules of the Supreme Court of the United States, I have forwarded via Certified Mail with return receipt requested, service copies of the foregoing Brief Opposing Motion to Dismiss, to counsel for appellees at their respective addresses as shown on the front cover page of this brief.

That they were placed in a sealed envelope properly addressed and deposited at the main branch Portland, Oregon, Post Office at S. W. Glisan and Broadway on this date.

That inasmuch as I am not represented by counsel a member of the Bar of the of the Supreme Court of the United States, I therefore will furnish proof of such service having been made by forwarding to the clerk of the Supreme Court, the certified mail receipt together with its return receipt card immediately upon receipt of same from the recipients.

Dated this day of November, 1961 at Portland, Oregon.

Appellant in propria persona.

BILL HERRON
c/o Western Oil Co.
10443 N. E. Klickitat
Portland 20, Oregon
AL 4-2867

Dated this 22nd day of November, 1961 at Portland, of November, 1961, at Portland, Multnomah County, Oregon.

Notary Public for Oregon.
My Commission Expires
February 5, 1962.

APPENDIX A

OREGON REVISED STATUTE 19.005

Definitions for O.R.S. 19.023 to 19.190

Appellant refers to sub-section (6) only, to-wit: "Clerk" means the county clerk of, and such ex officio clerk of the trial court for, the county in which the judgment or appealable order is filed and entered, or either. (1959, c. 558, § 2.)

Note: O.R.S. 19.005 takes effect on January 1, 1960.

APPENDIX B

OREGON REVISED STATUTE 19.030. Amended by 1959, c. 558, § 3; renumbered O.R.S. 19.023

How appeal taken.

(1) An appeal to the Supreme Court shall be taken in the manner prescribed in O.R.S. 19.023 to 19.190.

(2) A party to a judgment desiring to appeal therefrom, or some specified part thereof, shall cause a notice, signed by himself or his attorney, to be served on such adverse party or parties as have appeared in the action, suit or proceeding and file the original, with proof of service indorsed thereon or affixed thereto, with the clerk.

(3) The notice shall be in the form prescribed in O.R.S. 19.029, shall be filed within the time prescribed in O.R.S. 19.026, and shall be accompanied by the designation required by O.R.S. 19.074. (Formerly 19.030.)

Note: The 1959 amendment to O.R.S. 19.030 took effect on January 1, 1960. Until January 1, 1960, O.R.S. 19.030 as compiled in the 1955 Replacement Part will remain in effect.

APPENDIX C

OREGON REVISED STATUTE 19.038

Filing of undertaking on appeal; exception to sureties.

(1) Except as provided in O.R.S. 19.045, within 10 days after the filing of the notice of the appeal, the appellant shall serve on the adverse party or his attorney an undertaking as provided in O.R.S. 19.040, and within such 10 days shall file with the clerk the original undertaking, with proof of service indorsed thereon.

(2) Within 5 days after the service of the undertaking, the adverse party or his attorney may except to the sufficiency of the sureties in the undertaking, or he shall be deemed to have waived his right thereto.

(3) The qualifications of sureties in the undertaking on appeal shall be the same as in bail or arrest, and, if excepted to, they shall justify in like manner. (1959, c. 558, § 8.)

Note: O.R.S. 19.038 takes effect on January 1, 1960.

Exhibit A

VERGEER & SAMUELS
ATTORNEYS AT LAW
1027 E. BURNSIDE
PORTLAND 14, OREGON

Mr. Bill Herron
c/o E. J. Arnold
10443 N.E. Klickitat
Portland 20, Oregon

Exhibit B

VERGEER & SAMUELS
ATTORNEYS AT LAW
1027 E. BURNSIDE
PORTLAND 14, OREGON

Mr. Bill Herron
c/o E. J. Arnold
10443 N.E. Klickitat
Portland 20, Oregon

VERGEER & SAMUELS
ATTORNEYS AT LAW
1027 E. BURNSIDE
PORTLAND 14, OREGON

VERGEER & SAMUELS
ATTORNEYS AT LAW
1027 E. BURNSIDE
PORTLAND 14, OREGON

Exhibit C

Mr. Bill Herron
c/o E. J. Arnold
10443 N. E. Klickitat
Portland 20, Oregon

Exhibit D.

Mr. Bill Herron
c/o E. J. Arnold
10443 N. E. Klickitat
Portland 20, Oregon